

UNITED STATES OF AMERICA,

Plaintiff,

v.

ESTATE OF SAMUEL M. JONES,

BRANCH BANKING & TRUST CO. OF  
VIRGINIA IN ITS REPRESENTATIVE  
CAPACITY AS EXECUTOR OF THE  
ESTATE OF SAMUEL M. JONES,

and

SAM'S JUNK, RECYCLE, SCRAP &  
MATERIALS SERVICES, INC.,

Defendants.

Civil Action No.

Consent Decree

## CONSENT DECREE

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UNITED STATES OF AMERICA,

**V.**

BRANCH BANKING & TRUST CO. OF  
VIRGINIA IN ITS REPRESENTATIVE  
CAPACITY AS EXECUTOR OF THE  
ESTATE OF SAMUEL M. JONES,

**SAM'S JUNK, RECYCLE, SCRAP &  
MATERIALS SERVICES, INC.,**

Defendants.

## Consent Decree

## I. BACKGROUND

WHEREAS, The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking

reimbursement of response costs incurred at and in connection with the release or threatened release of hazardous substances at the Sam Jones Junkyard Site in Gainesville, Prince William County, Virginia ("the Site");

WHEREAS, the United States has incurred approximately \$984,851 in response costs through February 1, 2005, including prejudgment interest calculated from December 10, 2001, in connection with the Sam Jones Junkyard Site and contends that the Estate of Samuel M. Jones, Branch Banking & Trust Co. of Virginia in its representative capacity as Executor of the Estate of Samuel M. Jones, and Sam's Junk, Recycle, Scrap & Materials Services, Inc. ("Settling Defendants") are jointly and severally liable for reimbursement of response costs incurred in connection with the Site;

WHEREAS, the Settling Defendants allege that as a result of the Site-related past actions of certain Federal Agencies ("Settling Federal Agencies") (as defined herein) the United States is a potentially responsible party under CERCLA with respect to the Site, and the Settling Defendants contend that they presently have a cause of action against the United States for recovery of costs incurred at the Site and/or for contribution of such costs pursuant to Sections 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(f).

WHEREAS, the United States and the Settling Defendants wish to amicably resolve the potential CERCLA cost-recovery and contribution actions, and avoid unnecessary litigation between the United States and the Settling Defendants;

WHEREAS, the Settling Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the Settling Federal Agencies (as defined herein) do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants; and

WHEREAS, the United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants solely for the purposes of this Consent Decree and the underlying complaint. Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property,

shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

#### IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Owner Settling Defendant" shall mean the Estate of Samuel M. Jones.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and Settling Defendants.

k. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has paid at or in connection with the Site through February 1, 2005, and all costs DOJ has incurred on behalf of EPA in connection with the Site through February 8, 2005, and which are identified in the cost summary reports attached hereto as Appendix A.

l. "Plaintiff" shall mean the United States of America.

m. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

n. "Settling Defendants" shall mean the Estate of Samuel M. Jones, Branch Banking & Trust Co. of Virginia, in its representative capacity as Executor of the Estate of Samuel M. Jones, and Sam's Junk, Recycle, Scrap & Materials Services, Inc.

o. "Settling Federal Agencies" shall mean the United States Department of the Army and the General Services Administration.

p. "Site" shall mean the Sam Jones Junkyard Site, encompassing approximately 66 acres, located in Gainesville, Prince William County, Virginia, and generally depicted on the map attached hereto as Appendix B.

q. "United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities, which includes without limitation EPA, the Settling Federal Agencies, and any federal natural resources trustee.

#### **V. PAYMENT OF PAST RESPONSE COSTS**

4. Within one hundred and eighty (180) Days of entry of this Consent Decree, Settling Defendants shall in cumulative sum pay to EPA \$856,000 in reimbursement of Past Response Costs incurred at or in connection with the Sam Jones Junkyard Site.

5. Payment by Settling Defendants shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants and Settling Federal Agencies by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Virginia following lodging of the Consent Decree.

6. At the time of payment, the Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 03MA and DOJ case number 90-11-2-08261, and the civil action number.



7. As soon as reasonably practicable after the date of entry of this Consent Decree, and consistent with Paragraph 8, below, the United States, on behalf of the Settling Federal Agencies, shall pay to the EPA \$67,000 in reimbursement of Past Response Costs.

8. If the payment to EPA required by Paragraph 7, above, is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if the payment required by Paragraph 7, above, is not made within 120 Days after the date of entry of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

9. The parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

10. The total amount to be paid pursuant to Paragraphs 4 and 7 shall be deposited in the EPA Hazardous Substance Superfund.

#### **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

11. Interest on Late Payments. If the Settling Defendants fail to make the payment required by Paragraph 4 (Payment of Past Response Costs) by the required due date set forth in

Paragraph 4, Interest shall begin to accrue on the unpaid balance on the day after the due date and shall continue to accrue through the date payment is made.

12. Stipulated Penalty.

a. If any amounts due under Paragraph 4 are not paid by the required due date set forth in Paragraph 4, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 11, \$500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 03MA, DOJ Case Number 90-11-2-08261, and the civil action number. Settling Defendants shall send the check for all stipulated penalties (and any accompanying letter) to the United States Environmental Protection Agency, Region III, attention:

Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

c. Copies of check(s) paid pursuant to this Section and any accompanying transmittal letter(s) shall be sent to the United States as provided in Section XII (Notices and Submissions) and to the Region III Docket Clerk (3RC00), U.S. Environmental Protection

Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Such notice shall reference the EPA Region and Site/Spill ID Number 03MA, DOJ Case Number 90-11-2-08261, and the civil action number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after the required due date set forth in Paragraph 4 and shall continue to accrue through the date payment is made.

13. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

14. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

15. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

**VII. COVENANTS BY PLAINTIFF**

16. Covenant Not to Sue Settling Defendants by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 4 in Section V (Payment of Past Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including, but not limited to, payment of all amounts due under Section V (Payment of Past Response Costs), and any amounts due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

17. Covenant for Settling Federal Agencies by EPA. Except as specifically provided in Section VIII (Reservation of Rights by United States), EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all payments required by Paragraph 7 of Section V of this Consent Decree. This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

**VIII. RESERVATIONS OF RIGHTS BY UNITED STATES**

18. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and Settling Federal Agencies with respect to all matters not expressly included within the Covenant Not to Sue Settling Defendants by United States in Paragraph 16 and Covenant for Settling Federal Agencies by EPA in Paragraph 17, above. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all other matters, including but not limited to the following:

- a. liability for failure of Settling Defendants or Settling Federal Agencies to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability based upon Settling Defendants' ownership or operation of the Site after the date of execution of this Consent Decree by the Settling Defendants;
- f. liability based upon Settling Defendants' or Settling Federal Agencies' transportation, treatment, storage, or disposal, or arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste into or in connection with the Site

after the date of execution of this Consent Decree by Settling Defendants and Settling Federal Agencies; and

g. liability arising from the past, present, or future disposal, releases, or threat of releases, of a hazardous substance, pollutant, or contaminant outside the Site.

**IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

19. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States (including, but not limited to, EPA and the Settling Federal Agencies), or its contractors or employees, with respect to Past Response Costs, any response action performed by or on behalf of the Settling Defendants at the Site prior to the execution of this Consent Decree, or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to Past Response Costs or any costs incurred by the Settling Defendants with respect to the Site as of the date of execution of this Consent Decree.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

21. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

22. The waiver in Paragraph 21, above, shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is

impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

#### **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

23. Except as provided in Paragraph 21, above, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 21, above, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

24. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants and Settling Federal Agencies are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are reimbursement of Past Response Costs.

25. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ



in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within ten (10) days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant by Plaintiff set forth in Section VII of this Consent Decree.

#### **XI. RETENTION OF RECORDS**

27. Until ten (10) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all Records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

28. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such Records to EPA. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

29. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site.

30. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

31. The United States acknowledges that each Settling Federal Agency 1) is subject to all applicable Federal record retention laws, regulations, and policies; and 2) has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## **XII. NOTICES AND SUBMISSIONS**

32. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Defendants in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Settling Federal Agencies, and Settling Defendants, respectively.

### **As to the United States:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-2-08261)  
P.O. Box 7611  
Washington, D.C. 20044-7611

Chief, Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-6-17428)  
P.O. Box 23986  
Washington, D.C. 20016-3986

As to EPA:

John J. Monsees (3RC42)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Joanne Marinelli (3HS12)  
Compliance Officer  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Barbara Borden (3PM30)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Docket Clerk (3RC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

As to Settling Defendants:

Andrew J. McCully  
Executor  
Branch Banking & Trust Co. of Virginia  
21 Main Street  
P.O. Box 93  
Warrenton, VA 20188

and

Michael McGovern  
Baker Botts L.L.P.  
The Warner  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400

### **XIII. RETENTION OF JURISDICTION**

33. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

### **XIV. INTEGRATION AND APPENDICES**

34. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the Costs Report for the Site and "Appendix B" is a map of the Site.

### **XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

35. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or

considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate.

Settling Defendants consent to the entry of this Consent Decree without further notice.

36. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XVI. SIGNATORIES/SERVICE**

37. Each undersigned representative of a Settling Defendant to this Consent Decree, the Deputy Chief of the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, and counsel for the Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

38. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

39. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that

Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

**XVII. FINAL JUDGMENT**

40. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005.

\_\_\_\_\_  
United States District Judge

**FOR THE UNITED STATES OF AMERICA:**

Date: \_\_\_\_\_

\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: \_\_\_\_\_

\_\_\_\_\_  
DONNA D. DUER  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

Date: \_\_\_\_\_

\_\_\_\_\_  
KENNETH C. AMADITZ  
Trial Attorney  
Environmental Defense Section  
United States Department of Justice  
P.O. Box 23986  
Washington, DC 20026-3986

PAUL J. MCNULTY  
United States Attorney  
Eastern District of Virginia

Date: \_\_\_\_\_

\_\_\_\_\_  
RICHARD W. SPONSELLER (VSB 39402)  
Assistant United States Attorney  
2100 Jamieson Avenue  
Alexandria, VA 22314



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Estate of Samuel M. Jones and Sam's Junk, Recycle, Scrap, and Materials Services, Inc.*, Civil Action No. \_\_\_\_\_ relating to the Sam Jones Junkyard Site.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: \_\_\_\_\_

\_\_\_\_\_  
DONALD S. WELSH  
Regional Administrator  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Date: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM C. EARLY  
Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Date: \_\_\_\_\_

\_\_\_\_\_  
JOHN J. MONSEES  
Senior Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

24.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Estate of Samuel M. Jones and Sam's Junk, Recycle, Scrap, and Materials Services, Inc.*, Civil Action No. \_\_\_\_\_ relating to the Sam Jones Junkyard Site.

**FOR DEFENDANT ESTATE OF SAMUEL M. JONES:**

Date: 6/20/05

\_\_\_\_\_  
Andrew J. McCully  
Executor  
Branch Banking & Trust Co. of Virginia  
21 Main Street  
P.O. Box 93  
Warrenton, VA 20188

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Michael McGovern  
Baker Botts L.L.P.  
The Warner  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400

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**FOR DEFENDANT BRANCH BANKING & TRUST CO. OF VIRGINIA IN ITS REPRESENTATIVE CAPACITY AS EXECUTOR OF THE ESTATE OF SAMUEL M. JONES:**

Date: 6/20/05

\_\_\_\_\_  
Andrew J. McCully  
Executor  
Branch Banking & Trust Co. of Virginia  
21 Main Street  
P.O. Box 93  
Warrenton, VA 20188

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Michael McGovern  
Baker Botts L.L.P.  
The Warner  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400

FOR DEFENDANT SAM'S JUNK, RECYCLE, SCRAP, AND MATERIALS SERVICES,  
INC.:

Date: 6-17-05

~~Conrad Holtslag~~  
President  
Sam's Junk, Recycle, Scrap, and Materials  
Services, Inc.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Michael McGovern  
Baker Botts L.L.P.  
The Warner  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400